



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0152; FRL-9978-09-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Interstate Transport Requirements for the 2012 Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Delaware. This revision pertains to the infrastructure requirement for interstate transport of pollution with respect to the 2012 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). EPA is proposing approval of this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2017-0152 at <http://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, (215) 814-2021, or by e-mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

On December 14, 2015, the State of Delaware, through the Department of Natural Resources and Environmental Control (DNREC) submitted a SIP revision addressing the infrastructure requirements under section 110(a)(2) of the CAA for the 2012 PM_{2.5} NAAQS. On September 22, 2017, EPA approved all portions of Delaware’s submittal except for the portion addressing section 110(a)(2)(D)(i)(I) regarding the interstate transport of emissions. *See* 82 FR 44318. As explained in the final rule, EPA intended to take separate action on that portion of Delaware’s submittal and is doing so with today’s proposed action.

I. Background

A. General

Particle pollution is a complex mixture of extremely small particles and liquid droplets in the air. When inhaled, these particles can reach the deepest regions of the lungs. Exposure to particle pollution is linked to a variety of significant health problems. Particle pollution also is the main

cause of visibility impairment in the nation's cities and national parks. PM_{2.5} can be emitted directly into the atmosphere, or it can form from chemical reactions of precursor gases including sulfur dioxide (SO₂), nitrogen dioxide (NO₂), certain volatile organic compounds (VOC), and ammonia. On January 15, 2013, EPA revised the level of the health based (primary) annual PM_{2.5} standard to 12 micrograms per meter cubed (µg/m³). *See* 78 FR 3086.

B. EPA's Infrastructure Requirements

Pursuant to section 110(a)(1) of the CAA, states are required to submit a SIP revision to address the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements to assure attainment and maintenance of the NAAQS – such as requirements for monitoring, basic program requirements, and legal authority. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances of each NAAQS and what is in each state's existing SIP. In particular, the data and analytical tools available at the time the state develops and submits the SIP revision for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

Specifically, section 110(a)(1) provides the procedural and timing requirements for SIP submissions. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure

attainment and maintenance of the NAAQS.

C. Interstate Pollution Transport Requirements

Section 110(a)(2)(D)(i)(I) of the CAA requires a state's SIP to address any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the "good neighbor" provision of the CAA. On March 17, 2016, EPA issued a memorandum providing information on the development and review of SIPs that address CAA section 110(a)(2)(D)(i) for the 2012 PM_{2.5} NAAQS (2016 PM_{2.5} Memorandum).¹ Further information can be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at www.regulations.gov, Docket number EPA-R03-OAR-2017-0152.

II. Summary of SIP Revisions and EPA Analysis

Delaware's December 14, 2015 SIP submittal asserted that the State's SIP presently contains adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to nonattainment or interfere with maintenance of the 2012 PM_{2.5} NAAQS. Delaware also asserted under Delaware Code, Title 7, Chapter 60, Subsection 6010(c), "Rules and regulations; plans," that the State has the legal authority to regulate sources whose emission could transport to areas in nonattainment or to areas currently attaining the NAAQS. Delaware also describes ambient air quality data for New Castle, Kent, and Sussex Counties as all being below the NAAQS. A detailed summary of Delaware's submittal and EPA's review

¹ "Information on the Interstate Transport "Good Neighbor" Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)," Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards (March 17, 2016). A copy is included in the docket for this rulemaking action.

and rationale for approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2012 PM_{2.5} NAAQS may be found in the TSD for this rulemaking action, which is available online at www.regulations.gov, Docket number EPA-R03-OAR-2017-0152.

EPA used the information in the 2016 PM_{2.5} Memorandum and additional information for the evaluation and came to the same conclusion as Delaware. As discussed in greater detail in the TSD, EPA identified the potential downwind nonattainment and maintenance receptors identified in the 2016 PM_{2.5} Memorandum, and then evaluated them to determine if Delaware's emissions could potentially contribute to nonattainment and maintenance problems in 2021, the attainment year for moderate PM_{2.5} nonattainment areas. Specifically, the analysis identified the following areas as potential nonattainment and maintenance receptors: (i) 17 potential receptors in California; (ii) one potential receptor in Shoshone County, Idaho; (iii) one potential receptor in Allegheny County, Pennsylvania; (iv) data gaps exist for the monitors in four counties in Florida; and (v) data gaps exist for all monitors in Illinois. For the 17 receptors in California and one potential receptor in Idaho, based on EPA's evaluation of distance and wind direction, EPA proposes to conclude that Delaware's emissions do not significantly impact those receptors. For the potential receptor in Allegheny County, EPA expects the air quality affecting that monitor to improve to the point where the monitor will not be a nonattainment or maintenance receptor by 2021 and is therefore unlikely to be a receptor for purposes of interstate transport. For the four counties in Florida and the monitors in Illinois with data gaps, EPA initially treats those receptors as potential nonattainment or maintenance receptors. For the Florida receptors, it is unlikely that they will be nonattainment or maintenance receptors in 2021 and in any event, modeling from the Cross-State Air Pollution Rule (CSAPR) indicates that Delaware's emissions do not contribute to them. For the monitors in Illinois, the most recent air quality data (from

2015 and 2016) indicates that all monitors are likely attaining the PM_{2.5} NAAQs and are therefore unlikely to be nonattainment or maintenance concerns in 2021. Therefore, EPA proposes to conclude that Delaware emissions will not contribute to any of these receptors. For these reasons, EPA is proposing to find that Delaware's existing SIP provisions as identified in the December 14, 2015 SIP submittal are adequate to prevent its emission sources from significantly contributing to nonattainment or interfering with maintenance in another state with respect to the 2012 PM_{2.5} NAAQS.

III. Proposed Action

EPA is proposing to approve the December 14, 2015 Delaware SIP revision addressing the interstate transport requirements for the 2012 PM_{2.5} NAAQS because the submittal adequately addresses section 110(a)(2)(D)(i)(I) of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, addressing the 2012 PM_{2.5} interstate transport obligations for Delaware, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: May 1, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

Authority: 42 U.S.C. 7401 et seq.

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